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Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Claims Against the Dealer Bond
of Adell Motor Sales, Inc

Case No.: 98-H-1111

FINAL DECISION

On October 30, 1998, James Van Treeck filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of Adell Motor Sales, Inc. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing. On January 21, 1999, a Public Notice of Time to File Dealer Bond Claim was published in The Sounder, a weekly newspaper published in the Village of Random Lake, Sheboygan County. The notice informed other persons who may have claims against Adell Motor Sales, Inc., to file them with the Department by March 22, 1999, and scheduled a hearing on the claims for April 16, 1999. Three additional claims were filed. The additional claims were filed by Soldwedel & Horn Enterprises, Inc., by Terry Horn, and by S & H Ford, Inc.

By letter dated April 8, 1999, the Administrative Law Judge cancelled the hearing and instructed the parties to file any additional materials which they wished to have considered in making the Preliminary Determination by April 16, 1999. No additional information was filed. The Administrative Law Judge issued a Preliminary Determination on May 25, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

FINDINGS OF FACT

1. Adell Motor Sales, Inc., (Adell or dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. Adell's dealership facilities were located at 420 Wisconsin Street, Adell, Wisconsin.
2. Adell had a bond in force from September 1, 1993 to November 6, 1998 (Bond #58576351 from Western Surety Company, Sioux Falls, S.D.) The dealer went out of business on August 11, 1998.

3. James Van Treeck ordered a new Ford truck from the dealer on February 24, 1998. Mr. Van Treeck made a down payment of \$350.00 and was told by the salesperson that the truck would be available for delivery in about eight weeks. An anticipated delivery date was not filled in on the motor vehicle purchase contract. Terry Horn and Brad Soldwedel were operating the dealership under a management agreement. Mr. Horn and Mr. Soldwedel closed the dealership in July, 1998, and the dealership was placed in receivership. Attorney Richard Cramer was appointed the receiver.

Mr. Van Treeck was contacted by Mr. Cramer on around July 25, 1998. Mr. Van Treeck was informed that he could pick up the vehicle at the dealership. Mr. Van Treeck went to the dealership to inspect the vehicle and found that the vehicle had not been prepped for sale, and that there was an option on the vehicle that he had not ordered (a passenger side air bag). Mr. Van Treeck did not accept delivery of the vehicle. His deposit was not returned to him.

4. The dealer violated sec. Trans 139.05(2)(e), Wis. Adm. Code. Sec. Trans 139.05(2)(e), Wis. Adm. Code, requires that a contract or offer to purchase shall "Specify an anticipated delivery date on the face of the contract . . ." A violation of sec. Trans 139.05(2)(e), Wis. Adm. Code, is, in turn, a violation of sec. 218.01(3)(a)14, Stats. Mr. Van Treeck's loss was caused by the dealer's failure to specify an anticipated delivery date in the motor vehicle purchase contract.

5. Soldwedel & Horn Enterprises, Inc., filed a claim against the motor vehicle dealer bond of Adell on February 11, 1999. The claim is in the amount of \$10,989.96 and is itemized as follows:

<u>Rent</u>		
August	1,700.00	Adell didn't move their stuff out of the building
September	1,700.00	until mid to late September.
Utilities	422.73	
Real Estate Taxes	1997	3,226.58
Real Estate Taxes	1998	<u>3,940.65</u>
		10,989.96

6. Adell apparently rented a building from Soldwedel & Horn Enterprises, Inc., and the claim represents amounts allegedly owed pursuant to the lease. Pursuant to sec. Trans 140.21(2)(c), Wis. Adm. Code, "[a]ny claim arising from activities of the licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims for *rent*, mortgage payments, wages, commissions, personal services rendered and commercial transactions not directly related to the sale or purchase of a motor vehicle" are not allowed (emphasis added). This claim is not an allowable claim.

7. Terry Horn filed a claim against the motor vehicle dealer bond of Adell on February 10, 1999. The claim is in the amount of \$1,400 and represents wages which allegedly were not paid for the period from July 1 to July 15, 1998.

Pursuant to sec. Trans 140.21(2)(c) "[a]ny claim arising from activities of the licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims for rent, mortgage payments, *wages*, commissions, personal services rendered and commercial transactions not directly related to the sale or purchase of a motor vehicle" are not allowed (emphasis added). This claim is not an allowable claim.

8. S & H Ford, Inc , filed a claim against the motor vehicle dealer bond of Adell on February 15, 1999. The claim is in the amount of \$127,346 60 and allegedly represents the amount paid for an option to purchase the dealership. The claim is itemized as follows:

The following is a schedule of damages suffered because the Ford franchise was never given, according to the documents the option payments, should have been reimbursed.

Original Option down payment		50,000.00
		15,166 00
1994 payments	10 months	15,166 00
1995 payments	12 months	18,199.20
1996 payments	12 months	15,166.00
1997 payments	12 months	9,099.60
1998 payments	6 months	<u>4,549 80</u>
		127,346.60

Pursuant to sec. Trans 140 21(2)(c), Wis Adm. Code, "[a]ny claim arising from activities of the licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims for rent, mortgage payments, wages, commissions, personal services rendered and *commercial transactions not directly related to the sale or purchase of a motor vehicle*" are not allowed (emphasis added) This claim is not an allowable claim.

9 The claims were filed within three years of the ending date of the one-year period the Western Surety Company bond was in effect

Discussion

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Section Trans 140.21(1), Wis. Adm. Code, provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following.

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within three years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Mr Van Treeck purchased a new vehicle from the dealer on February 24, 1998. The undisputed testimony of Mr. Van Treeck is that he was orally promised delivery of the vehicle within eight weeks. The anticipated delivery date was not included in the purchase contract as required by sec. Trans 139.05(2)(e), Wis. Adm. Code. The vehicle was not delivered to Mr. Van Treeck within eight weeks.

Adell subsequently went out of business and into receivership. In July, 1998, the receiver telephoned Mr. Van Treeck and informed him that the vehicle was available to pick up at the dealer's lot. There is no indication that Mr. Van Treeck attempted to cancel the order as allowed under sec. Trans 139.05(2)(e), Wis. Adm. Code, and apparently Mr. Van Treeck was still willing to accept delivery of the vehicle. However, Mr. Van Treeck discovered the vehicle had not been prepped and had an option (a passenger side air bag) which he did not want and would have had to have paid to have disabled. Mr. Van Treeck refused to accept delivery of the vehicle and the receiver refused to return his \$350.00 deposit. Mr. Van Treeck filed a claim against Adell's motor vehicle dealer bond seeking the return of his deposit.

As stated above the motor vehicle purchase contract prepared by the salesperson for Adell failed to specify the anticipated delivery date for the vehicle. This is a violation of sec. Trans 139.05(2)(e), Wis. Adm. Code, and, in turn, a violation of sec. 218.01(3)(a)14, Stats. This violation is an act that is grounds for the suspension or revocation of Adell's motor vehicle dealer license. Since Mr. Van Treeck apparently was still willing to accept delivery of the vehicle in July, the violation did not directly cause Mr. Van Treeck's loss. However, if the vehicle had been delivered within the time frame promised it would have been delivered before the dealer had gone out of business. If the vehicle had been delivered while Adell was still an active dealer, presumably it would have been properly prepped and Mr. Van Treeck's concerns about the unordered passenger side air bag would have been resolved. Under the circumstances, Mr. Van Treeck's only recourse was to refuse to accept delivery of the vehicle and his loss, the unreturned deposit, was indirectly caused by the violation.

The three claims filed by Terry Horn and Brad Soldwedel are not related to the sale or purchase of a motor vehicle and are not allowable claims against a motor vehicle dealer bond.

CONCLUSIONS OF LAW

1. James Van Treeck's claim arose on February 24, 1998, the date he purchased the subject vehicle from Adell Motor Sales, Inc. The surety bond issued to Adell Motor Sales, Inc., by Western Surety Company covers the period from September 1, 1993 to November 6, 1998. The claim arose during the period covered by the surety bond.

2. Mr. Van Treeck filed a claim against the motor vehicle dealer bond of Adell Motor Sales, Inc., on September 30, 1998. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Mr. Van Treeck's loss was caused by an act of Adell Motor Sales, Inc., which would be grounds for suspension or revocation of its motor vehicle dealer license. Mr. Van Treeck has submitted documentation to support a claim in the amount of \$350.00. Pursuant to sec. Trans 140.21(1)c, Wis. Adm. Code, this claim is allowable.

4. The claim filed by Soldwedel & Horn Enterprises, Inc., does not arise from an activity of Adell Motor Sales, Inc., which is regulated by the Department of Transportation and is not related to the sale or purchase of a motor vehicle. Pursuant to sec. Trans 140.21(2)(c), Wis. Adm. Code, the claim filed by Soldwedel & Horn Enterprises, Inc., must be disallowed.

5. The claim filed by S & H Ford, Inc., does not arise from an activity of Adell Motor Sales, Inc., which is regulated by the Department of Transportation and is not related to the sale or purchase of a motor vehicle. Pursuant to sec. Trans 140.21(2)(c), Wis. Adm. Code, the claim filed by S & H Ford, Inc., must be disallowed.

6. The claim filed by Terry Horn does not arise from an activity of Adell Motor Sales, Inc., which is regulated by the Department of Transportation and is not related to the sale or purchase of a motor vehicle. Pursuant to sec. Trans 140.21(2)(c), Wis. Adm. Code, the claim filed by Terry Horn must be disallowed.

7. The Division of Hearings and Appeals has the authority to issue the following order.

ORDER

The claim filed by James Van Treeck against the motor vehicle dealer bond of Adell Motor Sales, Inc., is APPROVED in the amount of \$350.00. Western Surety Company shall pay Mr. Van Treeck this amount for his loss attributable to the actions of Adell Motor Sales, Inc.

The claims filed by Soldwedel & Horn Enterprises, Inc., S & H Ford, Inc., and Terry Horn against the motor vehicle dealer bond of Adell Motor Sales, Inc., are DENIED.

Dated at Madison, Wisconsin on June 25, 1999

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By: Mark Kaiser
MARK J. KAISER
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